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COMMISSION ON HUMAN RIGHTS

Fifty-seventh session

SUMMARY RECORD OF THE 73rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 23 April 2001, at 6 p.m.

Chairperson: Mr. DESPOUY (Argentina)

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

(a) TORTURE AND DETENTION;

(b) DISAPPEARANCES AND SUMMARY EXECUTIONS;

(c) FREEDOM OF EXPRESSION;

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The meeting was called to order at 7.05 p.m.

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

(a) TORTURE AND DETENTION;

(b) DISAPPEARANCES AND SUMMARY EXECUTIONS;

(c) FREEDOM OF EXPRESSION;

(d) INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY;

(e) RELIGIOUS INTOLERANCE;

(f) STATES OF EMERGENCY;

(g) CONSCIENTIOUS OBJECTION TO MILITARY SERVICE (agenda item 11) (continued) (E/CN.4/2001/L.56, L.57 and L.67; E/CN.4/2001/2-E/CN.4/Sub.2/2000/46, chapter I, draft decision 1).

Draft resolution on the right to freedom of opinion and expression (E/CN.4/2001/L.56 and L.67)

1. Ms. STEFFEN (Canada), introducing the draft resolution, said the main point of the resolution was that freedom of opinion and expression gave meaning to the right to effective participation in society. The resolution addressed certain specific areas of concern, including those highlighted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his report (E/CN.4/2001/64 and Add.1).

2. The main new elements in the text dealt with: women's exercise of the right to freedom of opinion and expression without fear of reprisal; the need to consider questions of freedom of opinion and expression in the lead-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and at the Conference itself; the importance of the free flow of information from a diversity of sources; the negative impact on the right to freedom of opinion and expression of actions by non-State actors; and, in line with Commission resolution 1999/49, access to information for the purposes of HIV/AIDS prevention and education.

3. She said the eleventh preambular paragraph should be deleted.

4. Mrs. IZE-CHARRIN (Secretary of the Commission) announced that the representatives of Argentina, Brazil, Cameroon, Colombia, Costa Rica, Ecuador, France, Guatemala, India, Madagascar, Republic of Korea, and Venezuela, and the observers for Belarus, Bulgaria, Côte d'Ivoire, Croatia, Dominican Republic, Georgia, Greece, Hungary, Israel, Morocco, Nepal, Nicaragua, San Marino, Sweden, The former Yugoslav Republic of Macedonia and Turkey had joined the sponsors of the draft resolution.

5. Mr. REYES RODÍGUEZ (Cuba), introducing amendments to the draft resolution (E/CN.4/2001/L.67), said that his delegation found a number of paragraphs in the text of the draft resolution unacceptable. The method used in negotiating the text had been one which was currently fashionable in the Commission and which the delegation of Canada had been instrumental in developing, namely a group of sponsors had appropriated a draft resolution in the belief that they then had the right to incorporate whatever issues they wished. In the course of the negotiations, his own delegation had submitted 24 proposals, of which Canada had accepted only a part of one for incorporation in the text.

6. His delegation wished to submit an amendment dealing with the relationship between racist propaganda and the promotion of freedom of opinion and expression, an issue that the sponsors had not wished to include; it was significant that among the sponsors were a number of States that had entered reservations to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and used the right to freedom of opinion and expression to justify racist and anti-immigrant propaganda and activities.

7. His delegation felt obliged to request a vote on what it held to be a key principle. Operative paragraph 18 of the draft resolution requested the Special Rapporteur to make an official contribution to the World Conference against Racism, and he was concerned that that contribution might be manipulated in order to justify racism or racist opinions on the grounds of the right to freedom of opinion or expression.

8. His delegation would withdraw the second paragraph of document L.67 for the time being, but proposed that the first paragraph should become new paragraph 17 bis in the draft resolution.

9. Mr. SAHRAOUI (Algeria) said that, by withdrawing the eleventh preambular paragraph, the sponsors of the draft resolution had shown that they felt, rightly, that it was going too far to suggest that the exercise of the right to freedom of expression could make a positive contribution to action to combat racism and racial discrimination. It was important to carry that idea to its logical conclusion, however, and the Cuban amendment did so, by emphasizing the point that the right to freedom of opinion or expression could, if abused, give rise to incitement to racism and racial discrimination. That was readily apparent from the racist and xenophobic activities and political programmes carried out with impunity in many countries. His delegation therefore supported Cuba's proposed amendment, since it made clear where the freedom of opinion and expression began and ended.

10. Ms. STEFFEN (Canada) said the sponsors of the draft resolution recognized the importance of the issue raised by Cuba. They were, however, concerned to reflect the balance and breadth of the International Convention on the Elimination of All Forms of Racial Discrimination in the text, and therefore proposed the following paragraph, to replace the first paragraph proposed by Cuba in document L.67:

"*Affirms* the vital importance for the promotion and protection of the right to freedom of opinion and expression of compliance by each State with its obligations as assumed under the International Convention on the Elimination of All Forms of Racial Discrimination, including article 4."

The sponsors requested a vote on that proposal.

11. Mr. ZHEGLOV (Russian Federation), speaking in explanation of vote before the voting, said his delegation considered the question of the right to freedom of expression important and topical. Regrettably, there was a growing tendency in the Commission to overload thematic resolutions with unnecessary detail and contentious points that had no direct bearing on the topic under discussion. The draft resolution on the right to freedom of expression was no exception. Moreover, the sponsors had ignored other delegations' views when they did not coincide with their own, while taking refuge behind rhetoric about consensus, which in reality did not exist.

12. An increasing number of thematic resolutions, which in the past had been genuinely consensus-led were being put to a vote. His delegation believed that true consensus could be achieved if the sponsors would make a real effort to listen to their partners in the Commission, reach agreement on substantive issues, and show greater flexibility and realism.

13. During the informal consultations, his delegation had opposed many of the amendments proposed by the sponsors, including all provisions to do with the specific issues of conflict prevention and resolution. The proposed wording, torn from its context in documents of the Security Council - whose prerogative it was to resolve and avert conflicts, was obviously out of place in a resolution of the Commission on Human Rights. Unfortunately, his delegation's opinion had not been taken into consideration.

14. In addition, as his delegation had pointed out during the consultations, it was inappropriate to include in thematic resolutions on specific rights special references to human rights defenders tasked with putting those rights into practice. In establishing the right to freedom of expression and opinion, article 19 of the International Covenant on Civil and Political Rights made no reference to specific categories of persons. Human rights defenders had no special legal status with regard to the exercise of specific rights. Furthermore, specific questions relating to their status were dealt with in a separate resolution of the Commission. His delegation considered that the artificial placement of human rights defenders in a separate category with regard to the exercise of specific rights could be construed as discrimination since it detracted from the enjoyment of such rights by all persons on an equal footing, as stated in General Comment No. 18 of the Human Rights Committee.

15. In a spirit of compromise, the Russian Federation had decided not to call for a vote on those rather dubious provisions of the draft resolution, nor to press for inclusion of its own amendments, the text of which had been made available to the Commission. His delegation hoped, however, that its point of view would be given due weight.

16. Mr. REYES RODRIGUEZ (Cuba) said that Canada's proposal was not so much an amendment as a different proposal. It was yet another repetition of the formula allowing

freedom of expression to be used as a cover for racist opinion and intolerance in countries that had entered reservations to article 4. His delegation could nevertheless accept the Canadian proposal subject to further modification, and he suggested the following wording:

> "*Affirms* the vital importance for the promotion and protection of the right to freedom of opinion and expression of compliance by each State with the obligations established under the International Convention on the Elimination of All Forms of Racial Discrimination, in particular article 4."

17. The CHAIRPERSON suggested that the discussion should be adjourned in order to enable further consultations to be held among the sponsors.

18. It was so agreed.

Draft resolution on the question of enforced or involuntary disappearances (E/CN.4/2001/L.57)

19. Mr. PETIT (France), introducing the draft resolution, said it was clear from the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2001/69 and Add.1) that the practice of enforced disappearances remained a major problem in many regions. The total number of cases brought to the attention of the Working Group since its establishment was steadily growing. In 2001, it had reached 49,500, and the number of unresolved cases exceeded 46,000. It was regrettable that 73 Governments had never communicated with the Working Group concerning cases of enforced disappearances in their countries. Where there had been communication with Governments, significant results had sometimes been achieved.

20. The Commission had unanimously renewed the Working Group's mandate every three years, thus demonstrating its determination to combat what was an intolerable form of organized repression. The draft resolution before the Commission at its current session emphasized, inter alia, the following points concerning the Working Group's execution of its mandate: the continuing promotion of communication between the families of victims and Governments; the question of impunity, which was both a cause of enforced disappearances and an obstacle to the elucidation of cases; close monitoring of cases where children had been subjected to enforced disappearance and cases of ill-treatment or intimidation of witnesses or family members; the continued application of the gender perspective in its reporting process; and continued assistance to Governments in their implementation of the Declaration on the Protection of All Persons from Enforced Disappearance.

21. Two important new elements had been introduced into the draft resolution: support for the draft international convention prepared by the Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/1998/19, annex), and provision for the appointment of an independent expert to conduct an exhaustive review of existing legal norms. In that regard, the sponsors wished to replace operative paragraphs 11 and 12 of the draft resolution by the following paragraphs, which had been circulated to the members of the Commission:

> "11. *Requests* the Chairperson of the fifty-seventh session of the Commission, after consultations with the Bureau and the regional groups, to appoint an independent expert to examine the existing international criminal and human rights framework for the

protection of persons from enforced or involuntary disappearance, taking into account relevant legal instruments at the international and regional levels, intergovernmental arrangements on judicial cooperation, the draft international convention on the protection of all persons from enforced disappearance transmitted by the Sub-Commission in its resolution 1998/25, and also comments of States and intergovernmental and non-governmental organizations, with a view to identifying any gaps in order to ensure full protection from enforced or involuntary disappearance and to report to the Commission at its fifty-eighth session and to the working group established under paragraph 12 of the present resolution at its first session;

12. *Decides* to establish, at its fifty-eighth session, an intersessional open-ended working group of the Commission, with the mandate to elaborate, in the light of the findings of the independent expert, a draft legally binding normative instrument for the protection of all persons from enforced disappearance, taking into account, inter alia, the draft international convention on the protection of all persons from enforced disappearance transmitted by the Sub-Commission in its resolution 1998/25, for consideration and adoption by the General Assembly."

22. The amended text was the product of extensive and highly constructive discussions, and he hoped the draft resolution could be adopted by consensus.

23. Mrs. IZE-CHARRIN (Secretary of the Commission) said that the representatives of Belgium, Brazil, Cameroon, Costa Rica, Ecuador, Germany, Guatemala, Italy, Latvia, Madagascar, Norway, Republic of Korea, Romania, Senegal, South Africa, United Kingdom and Venezuela, and the observers for Albania, Austria, Belarus, Bulgaria, Cyprus, Denmark, Finland, Georgia, Greece, Netherlands, Nicaragua, Slovenia, Sweden and The former Yugoslav Republic of Macedonia had joined the sponsors of the draft resolution.

24. Ms. NORONA (Mexico), speaking on behalf of the Latin American and Caribbean Group, thanked the French delegation for its efforts to achieve a consensus on the question of the establishment of an intersessional working group. The statements made by both Governments and NGOs in the course of the Commission's current session had confirmed the need for such an initiative, since the problem of enforced disappearance affected all regions of the world.

25. Her group had actively participated in the negotiations on the draft resolution and, as a demonstration of its flexibility, had accepted France's amendments to operative paragraphs 11 and 12, on the understanding that the intersessional working group would be mandated to prepare a draft legally binding international instrument based on the draft transmitted by the Sub-Commission and on the report of the independent expert to be appointed in consultation with the regional groups. She hoped it would now be possible to reach a consensus on the question of enforced or involuntary disappearances.

26. Mr. DENNIS (United States of America) said his delegation supported the renewal of the mandate of the Working Group on Enforced or Involuntary Disappearances and commended it on its excellent work in support of the families of disappeared persons. It remained opposed, however, to the establishment of an intersessional open-ended working group, which would clearly duplicate work already handled by existing treaty bodies.

27. There was also a basic contradiction in the proposals contained in amended paragraphs 11 and 12. Paragraph 11 called for the appointment of an independent expert to consider whether there were any gaps in the current protection mechanisms. At the same time, paragraph 12 created a working group to develop a new legally binding instrument even before the independent expert had established any need for such an instrument. Clearly it would be premature to establish such a working group.

28. The United States therefore proposed that paragraph 12 should be deleted. It also proposed a technical amendment to paragraph 11 to delete the words "and to the working group established under paragraph 12 of the present resolution at its first session". The independent expert should submit his report to the Commission, which should then take a decision on the next steps.

29. Mr. PETIT (France) considered that it was in no way premature to provide for the establishment of a working group. The independent expert could complete his or her work in a year and the working group could then be established at the Commission's fifty-eighth session. The sponsors of the draft resolution therefore proposed that paragraph 12 should be retained.

30. Ms. NASCIMBENE DE DUMONT (Argentina) said that the text proposed by the delegation of France was the product of intensive informal consultations involving numerous proposals that had been considered by all parties. Her delegation had hoped that it would be possible for the resolution to be endorsed by consensus. Unfortunately, it appeared that that was not the case. She therefore urged all those who believed that enforced disappearance was a major violation of human rights to oppose the amendment proposed by the United States and vote in favour of retaining paragraph 12, as proposed by France.

31. Mr. DENNIS (United States of America) said the United States was proposing an amendment to the text, not a vote on a single paragraph. There were two aspects to that amendment: first, the deletion of the last line of the amended paragraph 11 (the independent expert should report to the Commission and not to the working group); and secondly, the deletion of paragraph 12.

32. Ms. WONG (Office of the High Commissioner for Human Rights), speaking under rule 8 of the rules of procedure of the functional commissions of the Economic and Social Council, said no additional resources would be required for the extension of the mandate of the working group, since provision had already been made for that in the programme budget for the current biennium and in the proposed programme budget for the biennium 2002-2003.

33. The cost of the additional activities envisaged under paragraphs 11 and 12 would amount to US$ 18,500. No provision had been made to cover those activities or that amount under section 22 of the proposed programme budget for the biennium 2002-2003. It was expected, however, that the costs could be absorbed within overall resources to be appropriated for the next biennium.

34. The estimated full cost of conference servicing would be US$ 340,000, assuming no part of the conference-servicing requirement would be met from within the permanent capacity to be covered under section 2 of the programme budget, which dealt with General Assembly affairs

and conference services. Section 2 did, however, make provision for meetings that might be authorized after the budget had been prepared, provided that the number and distribution of those meetings were consistent with the pattern of past years. On that basis, no additional resources would be required.

35. Ms. GERVAIS-VIDRICAIRE (Canada) noting that the United States amendment contained two distinct elements, said her delegation requested a separate vote on each of those elements.

36. Mr. SAHRAOUI (Algeria), supported by Mr. SABHARWAL (India), said that the last part of the final sentence of paragraph 11 linked the two paragraphs in such a way that they must be taken as a whole. He failed to see, therefore, how it was possible to vote on the two elements of the proposed amendment separately.

37. The CHAIRPERSON said Canada was within its rights to request two votes. According to rule 64 of the rules of procedure, when two or more amendments were moved to a proposal, the amendment furthest removed in substance from the original proposal must be voted on first. He would therefore be asking members of the Commission to vote first on the amendment proposing the deletion of paragraph 12, as orally amended by France.

38. Mr. WATANABE (Japan), speaking in explanation of vote before the voting, said that, while his delegation strongly supported renewal of the mandate of the Working Group, as provided for under operative paragraph 9 of the draft resolution, it had some doubts regarding the establishment of an intersessional open-ended working group as provided for in amended paragraph 12.

39. First, given that various international instruments on enforced disappearances already existed, the Commission should weigh carefully the need for a new one. Secondly, only nine States had responded to the Secretary-General's request for views and comments, which appeared to indicate that most Governments were not interested in a new instrument. Thirdly, the current draft international convention on the protection of all persons from enforced disappearance did not enjoy broad support as a negotiating document. Progress in an intersessional working group would be impossible without common understanding and the broad support of many Governments. For those reasons, his delegation would vote for the deletion of amended paragraph 12.

40. Ms. GERVAIS-VIDRICAIRE (Canada), speaking in explanation of vote before the voting, said her delegation believed the Commission should focus more closely on enforced disappearances. The international community must take steps to provide effective protection against such disappearances, ascertain the fate of disappeared persons and ensure that perpetrators were punished. It was for that reason that Canada had strongly supported the drafting of the Declaration on the Protection of All Persons from Enforced Disappearance and continued to support the work of the Working Group on Enforced or Involuntary Disappearances.

41. However, the development of any new standards on enforced disappearances must at least meet the level of protection afforded by, inter alia, the Rome Statute of the International

Criminal Court, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights. Her delegation considered that the draft convention failed to meet those standards; it also wished to ensure that efforts to develop new standards would not detract from the work of existing mechanisms such as the Working Group on Enforced or Involuntary Disappearances. While it supported the resolution as a whole, therefore, the Canadian delegation would abstain from voting on the United States proposal to delete paragraph 12 and would vote in favour of its amendment to paragraph 11.

42. At the request of the representative of Mexico, a roll-call vote was taken on the United States proposal to delete new paragraph 12.

43. Venezuela, having been drawn by lot by the Chairperson, was called upon to vote first.

In favour: India, Japan, Malaysia, United States of America.

Against: Argentina, Belgium, Brazil, Burundi, Cameroon, Colombia, Costa Rica, Cuba, Czech Republic, Democratic Republic of the Congo, Ecuador, France, Germany, Guatemala, Italy, Latvia, Madagascar, Mauritius, Mexico, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, South Africa, Spain, Swaziland, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Zambia.

Abstaining: Algeria, Canada, China, Indonesia, Kenya, Liberia, Libyan Arab Jamahiriya, Niger, Nigeria, Pakistan, Qatar, Saudi Arabia, Syrian Arab Republic, Thailand, Viet Nam.

44. The proposal was rejected by 34 votes to 4, with 15 abstentions.

45. The CHAIRPERSON said that, according to rule 64, where the adoption of one amendment necessarily implied the rejection of another amendment, the latter should not be put to the vote. Accordingly, the second amendment proposed by the United States would not be put to the vote.

46. Mr. DENNIS (United States of America) said his delegation was of the view that the question whether the report of the independent expert should be submitted to the intersessional working group as well as to the Commission was a separate one. It therefore requested a vote on its proposal to delete from new paragraph 11 the words "and to the working group established under paragraph 12 of the present resolution at its first session"

47. At the request of the representative of Mexico, a roll-call vote was taken on the United States amendment to new paragraph 11.

48. Nigeria, having been drawn by lot by the Chairperson, was called upon to vote first.

In favour: Canada, India, Japan, Kenya, United States of America.

Against: Argentina, Belgium, Brazil, Burundi, Cameroon, Colombia, Costa Rica, Cuba, Czech Republic, Democratic Republic of the Congo, Ecuador, France, Germany, Guatemala, Italy, Latvia, Madagascar, Mauritius, Mexico, Niger, Norway, Pakistan, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, South Africa, Spain, Swaziland, Thailand, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Zambia.

Abstaining: Algeria, China, Indonesia, Liberia, Libyan Arab Jamahiriya, Malaysia, Nigeria, Qatar, Saudi Arabia, Syrian Arab Republic, Viet Nam.

49. The amendment was rejected by 37 votes to 5, with 11 abstentions.

50. Mr. SABHARWAL (India), said his delegation found an inconsistency in the approach contained in new paragraphs 11 and 12 of the draft resolution. In appointing an independent expert and creating an intersessional open-ended working group simultaneously, the Commission would be prejudging the findings of the independent expert, which might prevent him or her from making an objective appraisal of the whole issue. His delegation would have preferred the Commission to limit itself, at the current session, to appointing an independent expert to examine the issues involved and make suitable recommendations to the Commission for action at its next session.

51. His delegation was also opposed to the proliferation of human rights mechanisms, particularly since the existing mechanisms frequently duplicated one another's work. It was for those reasons that India had voted for the amendments proposed by the United States.

52. Ms. JANJUA (Pakistan) said her delegation was strongly in favour of the formulation of a legally binding instrument on protection from enforced disappearances. However, while it agreed with the establishment of an intersessional working group, her delegation had felt obliged to abstain from voting on paragraph 12, because it seemed rather premature for the Commission to take a decision on the matter at its current session. On the other hand, her delegation believed the report of the independent expert should be reviewed by the working group, and had therefore voted against the second amendment proposed by the United States.

53. The CHAIRPERSON observed that a major effort had been made to reach a consensus. The votes on the amendments had demonstrated the importance the Commission attached to the establishment of an intersessional open-ended working group and had in fact been part of the process of negotiation. If there was no objection, therefore, he would take it that the Commission wished to adopt the draft resolution.

54. The draft resolution, as orally amended by France, was adopted.

55. Ms. AL-HAJJAJI (Libyan Arab Jamahiriya) said that her country welcomed attempts to bring violators of human rights to justice, and particularly the perpetrators of genocide or crimes against humanity. It had therefore welcomed the establishment of the International Tribunals for the Former Yugoslavia and Rwanda, which had made it possible to bring major criminals to justice. Yet many others had escaped justice and were protected by the legislation of their countries. All perpetrators of such crimes must be prosecuted; any exceptions to that principle, regardless of rank or nationality, were totally unacceptable to her country. Equity in international criminal justice was vital to the credibility of the system.

56. Thus, although her delegation had joined the consensus on draft resolution L.57, it wished to place on record certain reservations regarding the fifth preambular paragraph. First, her country had not yet signed the Rome Statute of the International Criminal Court. Second, a large number of substantive issues concerning the Court remained to be resolved, including the definition of the crime of aggression. Lastly, her Government considered that the true purpose of establishing the Court was to strengthen the hegemony of rich and powerful countries over poorer countries. It was for those reasons that her delegation did not support the fifth preambular paragraph. The reservation was one of principle but did not extend to the draft resolution as a whole

Draft resolution on the right to freedom of opinion and expression (E/CN.4/2001/L.56 and L.67) (continued)

57. Ms. STEFFEN (Canada) said the sponsors of the draft resolution accepted the Cuban amendment referred to by the Cuban delegation in its statement. The first paragraph of document E/CN.4/2001/L.67 would become new paragraph 17 bis of the resolution.

58. Mr. REYES RODRÍGUEZ (Cuba) thanked the delegation of Canada for its efforts. It would have saved time if the other paragraphs of the draft resolution had been dealt with in the same way.

59. Ms. GLOVER (United Kingdom) said her delegation would vote in favour of the new paragraph 17 bis, on the understanding that the language could not be interpreted to mean that States had obligations under treaties to which they were not parties.

60. Mr. WATANABE (Japan) said his delegation was withdrawing from sponsorship of the draft resolution.

61. Mr. REYES RODRÍGUEZ (Cuba) said his delegation had objections to several paragraphs of the text. The third preambular paragraph and paragraph 14 referred to principles drafted by a group of NGOs in the United Kingdom, which should not, therefore, be used as a reference by the Commission. The fourth preambular paragraph contradicted article 19 of the International Covenant on Civil and Political Rights, under which States parties were entitled to restrict the right to freedom of expression or information, inter alia for reasons of national security. The tenth preambular paragraph set a dangerous precedent in taking note of a document over whose preparation States Members of the United Nations had had no oversight.

62. Paragraph 2 failed to define clearly the kind of organizations the Special Rapporteur was encouraged to work with. Lastly, paragraph 16 (a) granted the Special Rapporteur a privilege not granted to other special rapporteurs, that of drawing the High Commissioner's attention directly to particular situations; and furthermore, it encouraged the High Commissioner to act on the basis of such reports, without the scrutiny of the Commission.

63. His delegation therefore requested a separate roll-call vote on the proposal that the third, fourth and tenth preambular paragraphs and operative paragraphs 2, 14 and 16 (a) of the draft resolution should be deleted. In order not to waste the Commission's time, a single vote could be taken on the paragraphs as a whole. Cuba would vote against their retention.

64. Ms. STEFFEN (Canada) pointed out that the majority of the paragraphs in question had been agreed in past years

65. Mr. REYES RODRÍGUEZ (Cuba) said that the paragraphs had been agreed, but not by consensus. They had been adopted by imposed consensus, a mechanism increasingly used in the Commission. It was now time for Commission members to pronounce on the merits of each of those paragraphs.

66. The CHAIRPERSON recalled that Cuba had requested a roll-call vote on its proposal that the paragraphs in question should be deleted.

67. Indonesia, having been drawn by lot by the Chairperson, was called upon to vote first.

In favour: Algeria, Argentina, Belgium, Brazil, Cameroon, Canada, Colombia, Costa Rica, Czech Republic, Democratic Republic of the Congo, Ecuador, France, Germany, Guatemala, India, Indonesia, Italy, Japan, Latvia, Madagascar, Malaysia, Mauritius, Mexico, Niger, Nigeria, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, South Africa, Spain, Swaziland, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Zambia.

Against: China, Cuba, Libyan Arab Jamahiriya.

Abstaining: Burundi, Kenya, Pakistan, Qatar, Saudi Arabia, Syrian Arab Republic, Viet Nam.

68. The proposal was rejected by 42 votes to 3, with 7 abstentions.

69. Mr. REYES RODRIGUEZ (Cuba) said he hoped that, at its next session, the Commission would be able to reach a consensus on a resolution to which Cuba attached the utmost importance, in an atmosphere of constructive participation. Such a process needed encouragement, and he therefore requested a roll-call vote on the draft resolution, as orally amended, in which Cuba would abstain as a mark of its conviction that consensus should be built on negotiation and participation.

70. Mr. SAHRAOUI (Algeria), speaking in explanation of vote before the voting, said that his delegation was satisfied that its concerns had been taken into account in the negotiations on the amendments and would therefore vote in favour of the draft resolution.

71. Mr. WATANABE (Japan), speaking in explanation of the vote before the voting, said that, while his delegation fully agreed that incitement to racial discrimination was a grave violation of human rights and should not be permitted, it had reservations concerning the new paragraph 17 bis. Any restrictions on freedom of expression required very careful consideration. Once the right to freedom of expression was unduly curtailed by a Government, it could only be restored through great effort on the part of the people. It was important to address that issue. For that reason his delegation had withdrawn from sponsorship of the draft resolution; it would also abstain from voting on the draft resolution as a whole.

72. The CHAIRPERSON announced that the observer for Australia had also withdrawn from sponsorship of the draft resolution.

73. Mr. SOLOMON (United States of America) said that his delegation was regretfully withdrawing from sponsorship of the draft resolution as a result of the acceptance of new paragraph 17 bis. His delegation objected in principle to the language, to the extent that it purported to bind States to treaty provisions regardless of whether they had been accepted by a particular State. More generally, he said that individual freedom of speech, expression and association were extensively protected under the Constitution and laws of the United States. The United States did not accept any obligation under the International Convention on the Elimination of All Forms of Racial Discrimination, and in particular under article 4, to restrict such rights through the adoption of legislation or any other measures, to the extent that they were protected by the Constitution and laws of the United States. His delegation remained strongly committed to the goals of the resolution, however, and wished to express its gratitude to the delegation of Canada for its efforts.

74. The CHAIRPERSON recalled that the representative of Cuba had requested a roll-call vote on the draft resolution, as orally amended.

75. Romania, having been drawn by lot by the Chairperson, was called upon to vote first.

In favour: Algeria, Argentina, Belgium, Brazil, Burundi, Cameroon, Canada, Colombia, Costa Rica, Czech Republic, Democratic Republic of the Congo, Ecuador, France, Germany, Guatemala, India, Indonesia, Italy, Latvia, Madagascar, Malaysia, Mauritius, Mexico, Niger, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, South Africa, Spain, Swaziland, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Viet Nam, Zambia.

Against: None.

Abstaining: China, Cuba, Japan, Kenya, Libyan Arab Jamahiriya, Qatar, Saudi Arabia, Syrian Arab Republic.

76. The draft resolution, as orally amended, was adopted by 44 votes to none, with 8 abstentions.

The meeting rose at 9.25 p.m.